

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-945

January 30, 2004

BANGOR HYDRO-ELECTRIC COMPANY
Request For Approval of Special Rate
Contract With Fort James and Request for
Accounting Order

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

By this Order, we approve the Amended Special Rate Contract between Bangor Hydro-Electric Company (BHE) and Fort James Operating Company (Fort James) filed on January 23, 2004.

II. BACKGROUND

On December 29, 2003, BHE filed a petition with the Commission requesting approval of a Special Rate Contract with Fort James, to be effective on January 1, 2004. In addition, BHE requests that the Commission issue an accounting order authorizing BHE to defer, until its next stranded cost case, the lost revenue resulting from the January 1, 2004 Fort James Special Rate Contract.

In its petition, BHE states that Fort James has been receiving service from BHE at its facilities in Old Town, Maine under a series of special rate contracts since 1993. BHE adds that recently Fort James has been suffering financially as a result of the operation of its Old Town facilities. BHE asserts that the 2004 Special Rate Contract assures that the revenue received from Fort James will be in excess of BHE's marginal costs and will maximize the contribution by Fort James to BHE's fixed costs.

BHE also states that it anticipates that the 2004 Fort James Agreement will result in \$1.0 million less revenue to BHE during the 14-month period from January 1, 2004 through February 28, 2005 (the next date that stranded costs are expected to be reset) than what is currently built into BHE's stranded cost rates.¹

The most recent special rate contract between Fort James and BHE that we approved was processed as part of a stipulation in a transmission line certificate of public convenience and necessity proceeding. *Bangor Hydro-Electric Company*, Docket No. 2002-343 (April 23, 2003) (certificate case for a 115kV transmission line connecting Great Northern facilities to the BHE grid). After the Docket No. 2002-343 special

¹ BHE proposes to defer the lost revenue in order to avoid the need to file for increased stranded cost rates at this time. We address the accounting order request, including these revenue requirement matters, in a separate order issued this same day.

contract was filed with the Commission but before it was approved, Fort James announced that it was closing the tissue mill at Old Town, leaving only the pulp mill in operation at the Old Town site. At the hearing on the Stipulation filed in Docket No. 2002-343, BHE stated that it expected the 2003 special rate contract, made part of the Stipulation, would not be sufficient given the new, smaller operation in Old Town and that BHE expected that it would have to negotiate a larger discount to keep the pulp mill open.

In conjunction with approving the Docket No. 2002-343 Stipulation, we approved the Fort James special rate contract. In addition, we found that BHE acted prudently in entering into the 2003 Special Rate Contract.²

Soon after the announcement about the tissue mill, Governor Baldacci and his Staff began discussions with Georgia Pacific (the owner of the Fort James mills) to find a way to improve the economics of the mill so that it could be restarted. Ultimately, that effort was successful, and the tissue mill was re-opened in June, re-employing about 200 people.

By letter filed in this docket, a member of the Governor's staff states that the efforts to restart the mill were successful due to a combined package of operational and supply arrangements involving energy and raw materials that lowered the mills' total costs. According to that letter, the special rate contract, filed by BHE in this docket, was an important piece of the inter-related agreements that led to reopening the tissue mill (and ensuring the pulp mill remained open).

The 2004 proposed contract will replace the contract we approved in Docket No. 2002-343, that was scheduled to become effective on January 1, 2004. The proposed contract is divided into two periods, January 1, 2004 to February 28, 2005 and March 1, 2005 to December 31, 2008.

Under the proposed contract, in the initial period, Fort James will pay BHE a fixed rate of \$20,000 per month plus \$0.64/peak kVar and \$0.02/kWh (and the applicable transmission rate). As originally proposed, in the second period, for usage up to 90 million kWhs, Fort James would pay the fixed charge of \$20,000 per month, plus \$0.64/peak kVar (plus transmission). For usage over 90 million kWhs, Fort James would pay the D-4 filed rate schedule. BHE estimates that the revenue from the contract will be about \$2,224,000 in the first period and \$240,000 per year in period two. BHE explains that the contract is divided into different periods because by the beginning of period two, Fort James will have installed a biomass/turbine from a power plant formerly located in Athens, Maine and will therefore have greater self-generation capability.

² We analyzed the special contract on its own merit, separate from the other stipulation provisions pertaining to the transmission line.

The Advisory Staff questioned the reasonableness of having a back-up contract with a break-point of 90 million kWh before Fort James would incur a usage-based charge. Upon further discussions, BHE and Fort James agreed to amend the proposed contract so that in period two, the rate will be \$20,000/month plus \$0.64/peak kVar for up to 53 million kWh. For usage between 53 million kWh and 90 million kWh, Fort James will also pay 4.5 mils/kWh. For usage over 90 million kWh, Fort James will pay the D-4 rate. BHE filed an amended proposed contract, with the above-described price change, on January 23, 2004. The amended contract presents the opportunity for additional revenue in period two, but BHE is uncertain that Fort James will use over 53 million kWh.

III. DECISION

We approve the Amended 2004 Special Rate Contract with Fort James as filed on January 23, 2004. Further, in this case, BHE asks that the Commission find BHE to be prudent in addition to approving the contract. We conclude that BHE has acted prudently in entering into the new contract with Fort James. Normally, a prudence finding could be made only upon a more detailed review than would be possible during a one-month long contract approval proceeding. We are able to do so in this case for similar reasons as we did in the Docket 2002-343 proceeding. *April 23 Order at 6.* Given the recent course of events involving the Fort James facilities, it was shown that significant changes were necessary to keep the pulp mill operating and to re-start the tissue mill. As described by the Governor's staff, significant concessions and accommodations were made by the State and other suppliers. In the context of the extensive effort to keep the mills operating, including concessions by many other entities, we are able to conclude that BHE acted reasonably in agreeing to the special contract with Fort James and, therefore, we find BHE prudent for doing so.

Dated at Augusta, Maine, this 30th day of January , 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.